The defendants were an English company and the contract was made in England. Subsequent to the making of the contract the Spanish government issued a decree fixing the freight rate at a much lower price than that stipulated in the contract. The cargo was delivered in Barcelona, but the defendants refused to pay more than the legal rate. *Held*, that the plaintiff cannot recover. *Ralli Bros.* v. *Compañia Naviera Sota y Aznar*, [1920] 2 K. B. 287.

For a discussion of the principles involved in this case, see NOTES, *supra*, p. 319.

CONTRACTS — DIVISIBLE CONTRACTS — BUYER'S FAILURE TO PAY AS EXCUSE FOR SELLER'S NON-PERFORMANCE. — The plaintiff contracted to deliver goods to the defendant, on 30 days' credit, in certain instalments, January, February, and "after March 1st." He shipped none until February and made intermittent partial deliveries until June. The defendant accepted all partial deliveries, paying for the first two only and finally refusing to pay anything further unless the plaintiff recognize his claim for damages and give assurance of future shipments. The plaintiff "rescinded" the contract and sued for the price of the goods accepted. The defendant admitted this liability but counterclaimed for damages for the plaintiff's failure to deliver goods as per contract. *Held*, that the counterclaim for goods due before "rescission" be allowed. *Goodyear Tire & R. Co.* v. *Vulcanized P. Co.*, 228 N. Y. 118, 126 N. E. 711.

A continued nonpayment by the buyer under an instalment contract, constituting a material breach, justifies the seller's refusal to perform further. *Kokomo Strawboard Co.* v. *Inman*, 134 N. Y. 92, 31 N. E. 248; *Jensen* v. *Goss*, 28 Cal. App. Dec. 135, 179 Pac. 225. It is immaterial that the seller owes an equivalent or greater amount of damages for prior breach on his part. *J. K. Armsby Co.* v. *Grays Harbor Commercial Co.*, 62 Ore. 173, 123 Pac. 32; *Standard Coal Co.* v. *Eclipse Coal Co.*, 102 S. E. 137 (Ga.). *Contra*, *Sperry, etc. Co.* v. *O'Neill-Adams Co.*, 185 Fed. 231. See 2 WILLISTON, CONTRACTS, §§ 859, 867. Moreover a refusal to pay except on some condition which the buyer has no right to impose has the same effect. *Stephenson* v. *Cady*, 117 Mass. 6; *Munroe* v. *Trenton, etc. Co.*, 206 Fed. 456. But see *Hjorth* v. *Albert Lea Mach. Co.*, 172 N. W. 488 (Minn.). The demand that the seller recognize the buyer's claim for damages is such an unjustifiable condition. *Harber Bros. Co.* v. *Moffat Cycle Co.*, 151 Ill. 84, 37 N. E. 676; *Nat'l Contracting Co.* v. *Vulcanite Portland Cement Co.*, 192 Mass. 247, 78 N. E. 414. The buyer's conduct in the principal case thus justified the seller's absolute refusal to proceed. But the failure to deliver the January and February instalments preceded any breach by the buyer who has therefore a right to damages. This is not waived by mere acceptance of the partial, late deliveries. *Hall* v. *New Hartford Canning Co.*, 153 App. Div. 562, 138 N. Y. Supp. 866; *Wisconsin Lumber Co.* v. *Pacific Tank Co.*, 76 Wash. 452, 136 Pac. 691. But see *Mason* v. *Valentine Co.*, 180 App. Div. 823, 168 N. Y. Supp. 159. Thus far the case may be supported. The first default in payment by the buyer, however, gave the seller the right to suspend further deliveries. *Raabe* v. *Squier*, 148 N. Y. 81, 42 N. E. 516; *Ackerman* v. *Santa Rosa-Vallejo Tanning Co.*, 257 Fed. 369. Hence the reasoning of the court in allowing damages for the seller's defective performance between this time and the misnamed "rescission" is unacceptable, contrary to authority, and to prior New York decisions. *Gardner* v. *Clark*, 21 N. Y. 399; *American Broom & Brush Co.* v. *Addikes*, 19 Misc. 36, 42 N. Y. Supp. 871.

CORPORATIONS — STOCKHOLDERS — CONSTRUCTION OF STATUTE INVOLVING LIABILITY OF STOCKHOLDERS FOR TORTS. — A statute provided that a stockholder should be personally liable to the extent of the amount unpaid on his stock for the "debts" of a corporation. 1919 SO. DAK. REV. CODE, § 8779.

Plaintiff secured a judgment against a corporation for a tort committed by it, and then sued the defendant stockholder under the statute. Plaintiff was nonsuited. *Held*, that the judgment be affirmed. *Clinton Mining & Mineral Co.* v. *Beacom*, 266 Fed. 621 (C. C. A.).

The principal case raises solely a question of statutory construction, for at common law a stockholder was not liable for the torts of a corporation. *Terry* v. *Little*, 101 U. S. 216. The authorities are divided, some holding with the principal case that the term "debts" or "liability to creditors" includes only contractual claims. *Savage* v. *Shaw*, 195 Mass. 571, 81 N. E. 303; *Avery* v. *McClure*, 94 Miss. 172, 47 So. 901. *Contra*, *Henley* v. *Myers*, 76 Kan. 723, 93 Pac. 168; *Rogers* v. *Stag Mining Co.*. 185 Mo. App. 659, 171 S. W. 676. This strict construction is perhaps justified where the statute penalizes officers or stockholders for failure to perform a duty. *Leighton* v. *Campbell*, 17 R. I. 51, 20 Atl. 14; *Howard* v. *Long*, 142 Ga. 789, 83 S. E. 852. But in the principal case the remedial nature of the statute should lead the courts to a liberal interpretation. See *Chase* v. *Curtis*, 113 U. S. 452, 463. The legislature, having created a legal unit, desires to protect those who may deal with it, and consequently gives creditors the remedy of compelling stockholders to pay in full for their stock. It would seem immaterial, therefore, whether claimants have dealt with the corporation contractually, or have been damaged by its misfeasance. The word "debts" is broad enough to cover both situations, especially if the claim has been reduced to judgment. The principal case relies on no authority except an inadequate reference to Blackstone; and it reaches an unfortunate result. In view of such a decision, however, legislatures would do well hereafter to use more specific language. See *Grindle* v. *Stone*, 78 Me. 176, 3 Atl. 183; *Linniger* v. *Botsford*, 32 Cal. App. 386 163 Pac. 63.

DAMAGES — MEASURE OF DAMAGES — TEMPORARY LOSS OF USE OF A DAMAGED PLEASURE VEHICLE. — The plaintiff's pleasure car was damaged and temporarily put out of commission by the defendant's negligence. *Held*, that the plaintiff could recover for the loss of use. *Dettmar* v. *Burns Bros.*, 181 N. Y. Supp. 146.

Where a vehicle used for business purposes is damaged its owner may recover for the temporary loss of use. *Andries* v. *Everitt Co.*, 177 Mich. 110, 142 N. W. 1067; *So. Ry.* v. *Kentucky Grocery Co.*, 166 Ky. 94, 178 S. W. 1162. But where the car is one used for pleasure, damages for such loss have on occasion been denied, mainly on the ground that they were speculative. *Foley* v. *Forty Second St., etc. Ry. Co.*, 52 Misc. Rep. 183, 101 N. Y. Supp. 780; *Hunter* v. *Quaintance*, 168 Pac. (Col.) 918. The distinction is unsound. Since the *jus fruendi* comprehends the right to use a thing for pleasure purposes as well as the right to employ it in business, an infringement of either is a legal wrong. The value of the right is in both cases capable of objective determination, because it is measured not by the use made of the chattel by its owner but by its potential utility. See *The Mediana*, 1900 A. C. 113, 117; See 1 SEDGWICK, DAMAGES, 9 ed., § 243*b*. And even if the assessment of damages does involve some practical difficulty that does not make the injury unreal and is no ground for denying recovery altogether. *Allison* v. *Chandler*, 11 Mich. 542. On this line of reasoning the principal case, in accord with the great weight of authority, allows a recovery regardless of the character of the use. *Cook* v. *Packard Motor Car Co.*, 88 Conn. 590, 92 Atl. 413; *Perkins* v. *Brown*, 132 Tenn. 294, 177 S. W. 1158. See 21 HARV. L. REV. 445.

DEEDS — ACKNOWLEDGMENT BEFORE INTERESTED PARTY. — The secretary of the plaintiff corporation in his capacity as a notary public attested a bill of sale in which the corporation was the grantee. The bill was recorded and the